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EXAMINER

LE, HUYEN D

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/060,234
Filing Date: February 01, 2002
Appellant(s): GUERET, JEAN-LOUIS H.

MAILED
APR 26 2007
Group 3700

Anthony M. Gutowski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/27/2006 appealing from the Office action mailed 04/14/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,519,795

HITCHCOCK, JR. et al

05-1985

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1, 3-9, 11-17, 22-42, 45-51, 60-67, 70-83, 85-91, 96-108, 110, 112-114, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-186, 189-192, 194, 203, 204, 206-212 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gray (4,594,835) in view of Hitchcock, Jr. et al (4,519,795).

The Gray reference discloses a device comprising a first portion 4 defining a recess 5; a second portion 1 movable with respect to the first portion 4 so as to selectively place the device in one of a closed position and an open position, wherein the first portion 4 and the second portion 1 define a substantially closed reservoir when the device is in the closed position, the application member 10 made of foam and being at least partially compressible and configured such that, when the device is in the closed position, the application member 10 is at least partially compressed inside the substantially closed reservoir and, when the device is moved from the closed position to the open position, the application member becomes substantially uncompressed, wherein the application member is configured so that when the application member is uncompressed, the application member is capable of being loaded with substantially all of an amount of product that the device is capable of containing (col. 3, lines 4-7).

Although Gray does not disclose that the application member 10 is attached to the second portion 1 by bonding, attention is directed to the Hitchcock, Jr. et al reference which teaches another application device having a pad 14 attached to a

Art Unit: 3751

plastic strip 12 by an adhesive (col. 2, lines 45-49) and use of the plastic strip as a handle (col. 3, lines 36-43).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the sachet device of Gray by attaching the application member to the second member (top foil 1) in view of the teaching of the Hitchcock, Jr. reference in a way such that when opening the sachet, the top foil can be peeled off from the bottom portion and used as a handle to apply the product on a user.

Regarding claims 60-67, 132, 133, 135-141, 203, 204, 206-212, the method of applying a product to a surface by the device would be inherently performed during the normal use of the Gray application device.

2. Claims 43, 44, 115, 116, 187, 188 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gray (4,594,835) in view of Hitchcock, Jr. et al (4,519,795).

Although the Gray reference does not specifically disclose that the sachets are removably joined by a frangible portion, attention is directed to the Hitchcock, Jr. et al reference which teaches a number of sachets 10 removable joined together by a frangible portion (scored or weakness line 38).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made provide weakness lines between the Gray sachets during manufacturing in view of the teaching of Hitchcock, Jr. et al reference to keep a number of sachets together as a unit for easy storage and transport and they can be easily removed for use.

(10) Response to Argument

Regarding applicant's arguments that there would have been no motivation to combine the features of Gray and Hitchcock and the examiner's allegation of modifying Gray is a broad conclusion and merely impermissible hindsight, examiner disagrees with applicant. Gray teaches a sachet for applying antiseptic comprising a bottom foil 4 defining a recess, a top foil 1 attached to the bottom foil 4, and a sponge 10 impregnated with antiseptic liquid (col. 1, lines 29-30) and compressed between the bottom foil 4 and a top foil 1. Gray does not show the sponge 10 attached to the top foil 1. On the other hand, Hitchcock teaches a swab for applying antiseptic (col. 4, lines 39-40) comprising a first portion 32 having a recess, a top strip 12, and further a sponge 14 attached to the top strip 12 by an adhesive and use of the top portion as a handle portion during the application of the product (see col. 3, lines 36-43). Therefore, it would have been obvious to one of ordinary skill in the art to modify the sachet device of Gray by attaching the sponge 10 to the top foil 1 in view of the teaching of the Hitchcock in a way such that when opening the sachet, the top foil would be peeled off from the bottom foil and used as a handle to give a user more flexibility while applying the product. The motivation to combine the Gray and Hitchcock and modify Gray is based on the facts that both Gray and Hitchcock teach a sachet or swab having a sponge applicator containing an antiseptic liquid for use in the medical application, and furthermore, Hitchcock teaches a sponge applicator attached to a top portion for use of the top portion as a handle portion during the application of the product. The obviousness deems satisfied.

Regarding applicant's arguments that Hitchcock requires the strip 12 to which the sponge 14 is attached, to be sufficiently stiff so that it can be fold into a handle structure and the top foil 1 of Gray being sufficiently flexible and thin would not be suitable for serving as a handle, examiner disagrees with applicant. There is no evidence in the Hitchcock reference that requires the strip 12 to be "sufficiently stiff" as asserted by applicant. The strip may be a semi-stiff polyethylene sheeting 42 which is shown as another embodiment by Figs. 5 and 6 (see col. 4, lines 6-10). Hitchcock suggests that the strip 12 being flat sheet-like. A flat sheet-like strip 12 does not equate "sufficiently stiff". For example, a piece of thin paper, which can be considered a "flat sheet-like" strip, is flexible. With the teaching of Hitchcock, it would have been obvious to one of ordinary skill in the art to modify Gray's device to attach the sponge 10 to the top foil 1. The top foil 1 would be sufficient be used as a handle for holding the sponge applicator 40 during application.

Regarding applicant's arguments that attaching the sponge 10 of Gray to the top foil 1 would have destroyed the usefulness and function of the V-notch 11 of Gray, and thus destroy the teaching of Gray, modifying the Gray device with the teaching of Hitchcock would not destroy Gray's invention. A V-notch facilitating opening a sachet or swab is known in the art. When attaching the sponge 10 to the top foil 1 of Gray device, it would have been obvious to one of ordinary skill to substitute the V-notch with another functional equivalent means for opening the sachet by allowing the top foil 1 being separate from the bottom foil 4 as taught by Hitchcock. Such modification would not

Art Unit: 3751

destroy the essence of Gray's invention but rather improve the usefulness of Gray's device.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Huyen Le

Conferees:



Justine Yu



Janet Baxter